IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 12TH FEBRUARY 2007 / 23RD MAGHA 1928

Crl.MC.No. 255 of 2007()

CMP.4289/2005 of JUDL.MAGISTRATE OF FIRST CLASS, VADAKARA

.....

PETITIONER: ACCUSED

T.MUHAMMED FIROZ, S/O.AHAMMED,
THOTTATHIL HOUSE, CHIRAKKARA,
THALASSERY.

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENTS: RESPONDENT/COMPLAINANT & STATE

---

1. S.H.O., VADAKARA POLICE STATION,
VADAKARA.

2. SUB INSPECTOR OF POLICE,
HIGHWAY POLICE, KOZHIKODE.

3. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 12/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.255 of 2007

Dated this the 12th day of February, 2007

ORDER

The grievance of the petitioner is that the learned Magistrate is wrongfully and without justification refusing to return an amount of Rs.1,22,900/- (Rupees One lakh twenty two thousand nine hundred only) which admittedly was seized from his possession. He faces the allegation that he has committed an offence punishable under the Kerala Abkari Act.

2. The learned counsel for the petitioner submits that there is no contention that the amount seized from his possession is in any way connected with the offence allegedly committed. Investigation is complete and final report has been filed before the learned Magistrate. The same is pending as C.C.No.53 of 2006 before the J.F.M.C, Vadakara. The petitioner applied for return of currency notes of Rs.1,22,900/- and two mobile phones, which were seized from him. By the impugned order, the currency notes were directed to be retained in custody, whereas the mobile phones were directed to be returned to the petitioner subject to conditions. The petitioner has come to this Court complaining about the refusal of the learned Magistrate to release the amount of Rs.1,22,900/-, which was admittedly seized from the possession of the petitioner and relating to which, there is no allegation that the same has any connection with the offence allegedly committed.

3. Notice was given to the learned Public Prosecutor. The learned Public Prosecutor does not oppose the said prayer. I find it difficult to accept the reasoning of the learned Magistrate that the currency note seized cannot be reckoned as property for the purpose of Section 451/452 Cr.P.C. The approach is absolutely incorrect.

4. I am satisfied, in these circumstances, that it is not necessary to retain the amount of Rs.1,22,900/- in custody of the court.

5. In the result, this Crl.M.C is allowed. The said amount of Rs.1,22,900/- (Rupees One lakh twenty two thousand nine hundred only) shall be released to the petitioner on condition that he executes a bond for the said amount along with two solvent sureties, each for the like sum to the satisfaction of the learned Magistrate.

(R.BASANT, JUDGE)

rtr/-